

House Foreign Affairs Committee
Tom Lantos Human Rights Commission

Hearing
on
Armed Conflict, Starvation and International Humanitarian Law

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Civilian starvation and the deprivation of objects indispensable to civilian survival are among the most devastating features of contemporary armed conflict. The effects are torturous, individually and socially destructive, and potentially transgenerational in their implications. For tens of millions of civilians across numerous conflict zones—including those in Syria, Myanmar, Yemen, Ethiopia, South Sudan, and now Ukraine—this is not simply the result of intractable scarcity or natural disaster. It is the product of choices about how to conduct war.

This panel has been asked whether and how international humanitarian law may have a role to play in responding to this reality. The answer to that question is that existing law does indeed provide crucial tools: prohibiting and criminalizing starvation of civilians as a method of warfare, protecting objects indispensable to civilian survival, and regulating humanitarian access. What is needed is the political will necessary to employ those tools.

In what follows, I will: first, explain what makes objects indispensable to survival distinctive in the conduct of hostilities; second, emphasize the implications of this for encirclement, or siege, deprivation; and, third, foreground some mechanisms for implementation.

First, on the special place of objects indispensable to survival:

Ordinarily, an object with both military and civilian uses—a “dual-use object”—is considered a military objective under the law of armed conflict. That means that it can be targeted, as long as feasible measures are taken to minimize civilian loss and the expected civilian impact is not

excessive in relation to the military advantage anticipated. Those are extremely important, but situationally contingent, restrictions, the details of which are often contested.

It is in recognition of the stakes for the civilian population that objects indispensable to civilian survival, such as food, water, and the systems by which they are produced and supplied get clearer and tighter protection under Protocols I & II Additional to the Geneva Conventions and associated customary international law.

Specifically, even if such objects are used not just by civilians, but also by combatants, two bright line prohibitions still apply. First, objects indispensable to survival cannot be targeted for their sustenance value unless they provide sustenance exclusively to combatants. In other words, unlike targetable dual-use objects, dual-use sustenance is legally protected. Second, objects indispensable to civilian survival cannot be targeted even on the basis of a direct military contribution other than sustenance, if such targeting would leave the civilian population starving or forced to move.

Both of these unique rules apply whether or not civilians are the primary target, regardless of motive, and independent of assessments of military advantage. They are bright lines designed to protect civilians from starvation.

Of course, attacking or destroying indispensable objects are only two modalities of starvation. Others include removing indispensable objects, rendering such objects useless, or cutting civilians off from external supply of such objects by siege or encirclement.

Removal and rendering useless are explicitly covered by the same framework as attacking or destroying in Additional Protocol I. About that there is no ambiguity. In my view, the most coherent reading of the law is that the framework on indispensable objects specifies what it means to engage in starvation of civilians as a method of warfare, which is prohibited regardless of modality, and thus applies also to encirclement deprivation.

As such, in the context of siege isolation, the first question is whether the supply of indispensable objects is being deliberately blocked. If yes, the next question is whether the purpose is to deny sustenance (even to combatants) in a context in which that denial will also impact civilians. If

yes, the operation is prohibited. Alternatively, when consignments of indispensable objects are blocked for military reasons other than denying their sustenance value, the question is whether conditions are such that the civilian population will be left starving or forced to move. If yes, the operation is again prohibited.

The reason for these elevated restrictions is the profound and indeed torturous suffering associated with starvation. But those effects occur over time and can be complicated to trace causally. As such, it is critical to emphasize that the legal protections focus in the first instance on the practices of belligerent parties with respect to indispensable objects.

Let me conclude by spotlighting three ways to leverage this legal framework.

First, a key aspect is attention. With Security Council Resolution 2417, there is a framework for keeping this at the top of the Security Council's agenda. But that requires states, including the United States, to maintain focus in that forum.

Second, it is important that all states, including the United States, codify the starvation war crime in their domestic war crimes codes and provide the jurisdictional basis for applying those codes to any alleged offender who is found on their territory.

Third, war crimes investigators in various jurisdictions need to be supported in their work on this issue. The legal framework is there, but they need evidence, resources, and access to make it work. All states should assist them in that endeavor.